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SENATE BILL 321

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO ELECTIONS; ABOLISHING THE PREPRIMARY CONVENTION
DESIGNATION OF CANDIDATES; RECONCILING MULTIPLE AMENDMENTS TO
THE SAME SECTION OF LAW IN LAWS 1993; AMENDING AND REPEALING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-8-13 NMSA 1978 (being Laws 1969,
Chapter 240, Section 162, as amended) is amended to read:

"1-8-13. PRIMARY ELECTION LAW--CONTENTS OF
PROCLAMATION.--The proclamation calling a primary election
shall contain:

A. the names of the major political parties
participating in the primary election;

B. the offices for which each political party shall
nominate candidates; provided that if any law is enacted by the

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1 legislature in the year in which the primary election is held
2 and the law does not take effect until after the date of the
3 proclamation but prior to the date of the primary election, the
4 proclamation shall conform to the intent of the law with
5 respect to the offices for which each political party shall
6 nominate candidates;

7 C. the date on which declarations of candidacy and
8 nominating petitions for United States representative, any
9 office voted upon by all the voters of the state, a legislative
10 office, the office of district judge, district attorney, [~~state~~
11 ~~board of~~] public education commission, public regulation
12 commission or magistrate shall be filed and the places where
13 they shall be filed in order to have the candidates' names
14 printed on the official ballot of their party at the primary
15 election; and

16 D. the date on and place at which declarations of
17 candidacy shall be filed for any other office and filing fees
18 paid or, in lieu thereof, a pauper's statement of inability to
19 pay.

20 ~~[E. the final date on and place at which candidates~~
21 ~~for the office of United States representative and for any~~
22 ~~statewide office seeking preprimary convention designation by~~
23 ~~the major parties shall file petitions and declarations of~~
24 ~~candidacy;~~

25 ~~F. the final date on which the major political~~

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1 ~~parties shall hold state preprimary conventions for the~~
2 ~~designation of candidates; and~~

3 ~~G. the final date on and place at which~~
4 ~~certificates of designation of primary election candidates~~
5 ~~shall be filed by political parties with the secretary of~~
6 ~~state.~~

7 ~~As used in the Primary Election Law, "statewide office"~~
8 ~~means any office voted on by all the voters of the state.]"~~

9 Section 2. Section 1-8-21 NMSA 1978 (being Laws 1996,
10 Chapter 20, Section 3) is amended to read:

11 "1-8-21. PRIMARY ELECTION--METHODS OF PLACING NAMES ON
12 PRIMARY BALLOT.--[A.] All candidates seeking primary election
13 nomination [~~to a statewide office or the office of United~~
14 ~~States representative shall file declarations of candidacy with~~
15 ~~the proper filing officer. Candidates shall file nominating~~
16 ~~petitions at the time of filing their declarations of~~
17 ~~candidacy. Candidates who seek, but do not obtain, preprimary~~
18 ~~convention designation by a major political party may file new~~
19 ~~declarations of candidacy and nominating petitions pursuant to~~
20 ~~Section 1-8-33 NMSA 1978.~~

21 ~~B. Candidates for any other office]~~ shall have
22 their names placed on the primary election ballot by filing
23 declarations of candidacy and nominating petitions with the
24 proper filing officer. Candidates for county office shall also
25 pay filing fees or file the proper paupers' statements at the

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1 time of filing declarations of candidacy."

2 Section 3. Section 1-8-26 NMSA 1978 (being Laws 1975,
3 Chapter 295, Section 12, as amended) is amended to read:

4 "1-8-26. PRIMARY ELECTION LAW--TIME OF FILING--DOCUMENTS
5 NECESSARY TO QUALIFY FOR BALLOT--CHALLENGE.--

6 A. Declarations of candidacy [~~by preprimary~~
7 ~~convention designation~~] for any statewide office or for the
8 office of United States representative and declarations of
9 candidacy for retention of a justice of the supreme court or
10 judge of the court of appeals shall be filed with the proper
11 filing officer on the second Tuesday in February of each even-
12 numbered year between the hours of 9:00 a.m. and 5:00 p.m.

13 B. Declarations of candidacy for any other office
14 and declarations of candidacy for retention for all affected
15 district judicial offices shall be filed with the proper filing
16 officer on the third Tuesday of March of each even-numbered
17 year between the hours of 9:00 a.m. and 5:00 p.m.

18 [~~C. Certificates of designation shall be submitted~~
19 ~~to the secretary of state on the first Tuesday following the~~
20 ~~preprimary convention at which the candidate's designation took~~
21 ~~place between the hours of 9:00 a.m. and 5:00 p.m.~~

22 ~~D.]~~ C. No candidate's name shall be placed on the
23 ballot until the candidate has been notified in writing by the
24 proper filing officer that the declaration of candidacy, the
25 nominating petition and the certificate of registration of the

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1 candidate on file are in proper order and that the candidate,
2 based on those documents, is qualified to have [~~his~~] the
3 candidate's name placed on the ballot. The proper filing
4 officer shall mail the notice no later than 5:00 p.m. on the
5 Tuesday following the filing date.

6 [~~E.~~] D. If a candidate is notified by the proper
7 filing officer that [~~he~~] the candidate is not qualified to have
8 [~~his~~] the candidate's name appear on the ballot, the candidate
9 may challenge that decision by filing a petition with the
10 district court within ten days of the notification. The
11 district court shall hear and render a decision on the matter
12 within ten days after the petition is filed."

13 Section 4. Section 1-8-27 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 172, as amended) is amended to read:

15 "1-8-27. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--
16 MANNER OF FILING.--Each declaration of candidacy [~~by nominating~~
17 ~~petition or by preprimary convention designation~~] shall be
18 delivered for filing in person by the candidate therein named
19 or by a person acting, by virtue of written authorization,
20 solely on the candidate's behalf. The proper filing officer
21 shall not accept for filing more than one declaration of
22 candidacy from any one individual [~~except that candidates who~~
23 ~~seek but fail to receive preprimary convention designation~~
24 ~~shall file a declaration of candidacy by nomination, according~~
25 ~~to provisions of the Primary Election Law, to have their names~~

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1 ~~placed on the primary election ballot]."~~

2 Section 5. Section 1-8-29 NMSA 1978 (being Laws 1973,
3 Chapter 228, Section 3, as amended by Laws 1993, Chapter 55,
4 Section 5 and by Laws 1993, Chapter 314, Section 46 and also by
5 Laws 1993, Chapter 316, Section 46) is amended to read:

6 "1-8-29. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--
7 FORM.--In making a declaration of candidacy [~~by nominating~~
8 ~~petition or by pre-primary convention designation~~] the
9 candidate shall submit substantially the following form:

10 "DECLARATION OF CANDIDACY
11 [~~BY PRE-PRIMARY CONVENTION DESIGNATION~~
12 ~~(OR BY NOMINATING PETITION)~~]

13 I, _____, (candidate's name on certificate
14 of registration) being first duly sworn, say that I reside at
15 _____, as shown by my certificate of registration
16 as a voter of Precinct No. _____ of the county of
17 _____, State of New Mexico;

18 I am a member of the _____ party as shown
19 by my certificate of registration and I have not changed such
20 party affiliation subsequent to the governor's proclamation
21 calling the primary in which I seek to be a candidate;

22 I desire to become a candidate for the office of
23 _____ at the primary election to be held on
24 the date set by law for this year, and if the office be that of
25 a member of the legislature or that of a member of the [state

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1 ~~board of~~] public education commission, that I actually reside
2 at the address designated on my certificate of voter
3 registration;

4 I will be eligible and legally qualified to hold this
5 office at the beginning of its term;

6 If a candidate for any office for which a nominating
7 petition is required, I am submitting with this statement a
8 nominating petition in the form and manner as prescribed by the
9 Primary Election Law; and

10 I make the foregoing affidavit under oath, knowing that
11 any false statement herein constitutes a felony punishable
12 under the criminal laws of New Mexico.

13 _____
14 (Declarant)

15 _____
16 (Mailing Address)

17 _____
18 (Residence Address)

19 Subscribed and sworn to before me this _____ day of
20 _____, [~~19~~] 20 _____.

21 _____
22 (Notary Public)

23 My commission expires:
24 _____"."

25 Section 6. Section 1-8-33 NMSA 1978 (being Laws 1973,

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1 Chapter 228, Section 7, as amended) is amended to read:

2 "1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--
3 NUMBER OF SIGNATURES REQUIRED.--

4 A. As used in this section, "total vote" means the
5 sum of all votes cast for all of the party's candidates for
6 governor at the last preceding primary election at which the
7 party's candidate for governor was nominated.

8 B. ~~[Candidates who seek preprimary convention~~
9 ~~designation shall file nominating petitions at the time of~~
10 ~~filing declarations of candidacy.]~~ Nominating petitions for
11 ~~[those candidates]~~ a candidate for United States representative
12 or any statewide office shall be signed by a number of voters
13 equal to at least two percent of the total vote of the
14 candidate's party in the state or congressional district, or
15 the following number of voters, whichever is greater: for
16 statewide offices, two hundred thirty voters; and for
17 congressional candidates, seventy-seven voters.

18 C. Nominating petitions for candidates for any
19 other office to be voted on at the primary election for which
20 nominating petitions are required shall be signed by a number
21 of voters equal to at least three percent of the total vote of
22 the candidate's party in the district or division, or the
23 following number of voters, whichever is greater: for
24 metropolitan court and magistrate courts, ten voters; for the
25 public regulation commission, fifty voters; for the public

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1 education commission, twenty-five voters; for state
2 representative, ten voters; for state senator, seventeen
3 voters; and for district attorney and district judge, fifteen
4 voters."

5 Section 7. Section 1-8-35 NMSA 1978 (being Laws 1973,
6 Chapter 228, Section 9, as amended) is amended to read:

7 "1-8-35. PRIMARY ELECTION LAW--NOMINATING PETITION--
8 LIMITATION ON APPEALS OF VALIDITY OF NOMINATING PETITIONS.--

9 A. Any voter filing any court action challenging a
10 nominating petition provided for in the Primary Election Law
11 shall do so within ten days after the last day for filing the
12 declaration of candidacy [~~with which the nominating petition~~
13 ~~was filed~~]. Within ten days after the filing of the action,
14 the district court shall hear and render a decision on the
15 matter. The decision shall be appealable only to the supreme
16 court, and notice of appeal shall be filed within five days
17 after the decision of the district court. The supreme court
18 shall hear and render a decision on the appeal forthwith.

19 B. For the purposes of an action challenging a
20 nominating petition, each person filing a nominating petition
21 under the Primary Election Law appoints the proper filing
22 officer as [~~his~~] the person's agent to receive service of
23 process. Immediately upon receipt of process served upon the
24 proper filing officer, the officer shall, by certified mail,
25 return receipt requested, mail the process to the person."

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1 Section 8. Section 1-8-40 NMSA 1978 (being Laws 1969,
2 Chapter 240, Section 175, as amended) is amended to read:

3 "1-8-40. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--
4 FALSE STATEMENT.--Any person knowingly making a false statement
5 in [~~his~~] the person's declaration of candidacy [~~by nominating~~
6 ~~petition or by preprimary convention designation~~] is guilty of
7 a fourth degree felony."

8 Section 9. Section 1-8-43 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 180, as amended) is amended to read:

10 "1-8-43. PRIMARY ELECTION LAW--ORDER OF CANDIDATES ON
11 BALLOT.--

12 ~~[A. Candidates designated and certified by state~~
13 ~~convention for a statewide office or the office of United~~
14 ~~States representative shall be placed on the primary election~~
15 ~~ballot in the order of the vote received at the state~~
16 ~~convention. The candidate receiving the highest vote shall be~~
17 ~~placed first in order on the ballot, followed by the candidate~~
18 ~~receiving the next highest vote, and so on until all the~~
19 ~~candidates designated for that office have been placed on the~~
20 ~~ballot, provided that the names of two or more candidates~~
21 ~~receiving an equal number of votes for designation by~~
22 ~~convention for the same office shall be placed on the primary~~
23 ~~ballot in the order determined by lot. Names of candidates for~~
24 ~~statewide office or the office of United States representative~~
25 ~~who do not receive preprimary convention designation but who~~

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1 ~~are qualified candidates by declaration of candidacy shall be~~
2 ~~placed on the ballot as determined by lot following convention~~
3 ~~designated candidates.~~

4 ~~B.]~~ A. The names of candidates [~~for any other~~
5 ~~office]~~ in the primary election who are candidates by
6 declaration of candidacy shall be arranged on the ballot as
7 determined by lot.

8 ~~[C.]~~ B. The determination by lot shall be made
9 immediately following the closing time for filing declarations
10 of candidacy and all candidates or their agents shall be
11 entitled to be present at such time.

12 ~~[D.]~~ C. The order of preference for position on the
13 ballot shall be first, the top name position on the left-hand
14 column for each office, and thereafter, consecutively down each
15 name position in that column to the last name position. If the
16 number of candidates filing for the office so requires, the
17 order of preference shall continue consecutively from the top
18 name position on the left-hand column to the top name position
19 on the right-hand column, thence to the second name position on
20 the left-hand column, then to the second name position on the
21 right-hand column and thereafter continuing in the same manner
22 until all the candidates are positioned on the ballot."

23 Section 10. Section 1-19-26 NMSA 1978 (being Laws 1979,
24 Chapter 360, Section 2, as amended) is amended to read:

25 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting

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1 Act:

2 A. "advertising campaign" means an advertisement or
3 series of advertisements used for a political purpose and
4 disseminated to the public either in print, by radio or
5 television broadcast or by any other electronic means,
6 including telephonic communications, and may include direct or
7 bulk mailings of printed materials;

8 B. "anonymous contribution" means a contribution
9 the contributor of which is unknown to the candidate or [~~his~~]
10 the candidate's agent or the political committee or its agent
11 who accepts the contribution;

12 C. "bank account" means an account in a financial
13 institution located in New Mexico;

14 D. "campaign committee" means two or more persons
15 authorized by a candidate to raise, collect or expend
16 contributions on the candidate's behalf for the purpose of
17 electing [~~him~~] the candidate to office;

18 E. "candidate" means an individual who seeks or
19 considers an office in an election covered by the Campaign
20 Reporting Act, including a public official, who either has
21 filed a declaration of candidacy or nominating petition or:

22 (1) for a nonstatewide office, has received
23 contributions or made expenditures of one thousand dollars
24 (\$1,000) or more or authorized another person or campaign
25 committee to receive contributions or make expenditures of one

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1 thousand dollars (\$1,000) or more for the purpose of seeking
2 election to the office; or

3 (2) for a statewide office, has received
4 contributions or made expenditures of two thousand five hundred
5 dollars (\$2,500) or more or authorized another person or
6 campaign committee to receive contributions or make
7 expenditures of two thousand five hundred dollars (\$2,500) or
8 more for the purpose of seeking election to the office or for
9 candidacy exploration purposes in the years prior to the year
10 of the election;

11 F. "contribution" means a gift, subscription, loan,
12 advance or deposit of money or other thing of value, including
13 the estimated value of an in-kind contribution, that is made or
14 received for a political purpose, including payment of a debt
15 incurred in an election campaign, but does not include the
16 value of services provided without compensation or unreimbursed
17 travel or other personal expenses of individuals who volunteer
18 a portion or all of their time on behalf of a candidate or
19 political committee, nor does it include the administrative or
20 solicitation expenses of a political committee that are paid by
21 an organization that sponsors the committee;

22 G. "deliver" or "delivery" means to deliver by
23 certified or registered mail, telecopier, electronic
24 transmission or facsimile or by personal service;

25 H. "election" means any primary, general or

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1 statewide special election in New Mexico and includes county
2 and judicial retention elections but excludes municipal, school
3 board and special district elections;

4 I. "election year" means an even-numbered year in
5 which an election covered by the Campaign Reporting Act is
6 held;

7 J. "expenditure" means a payment, transfer or
8 distribution or obligation or promise to pay, transfer or
9 distribute any money or other thing of value for a political
10 purpose, including payment of a debt incurred in an election
11 campaign [~~or pre-primary convention~~], but does not include the
12 administrative or solicitation expenses of a political
13 committee that are paid by an organization that sponsors the
14 committee;

15 K. "person" means an individual or entity;

16 L. "political committee" means two or more persons,
17 other than members of a candidate's immediate family or
18 campaign committee or a husband and wife who make a
19 contribution out of a joint account, who are selected,
20 appointed, chosen, associated, organized or operated primarily
21 for a political purpose; and political committee includes:

22 (1) political action committees or similar
23 organizations composed of employees or members of any
24 corporation, labor organization, trade or professional
25 association or any other similar group that raises, collects,

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1 expends or contributes money or any other thing of value for a
2 political purpose;

3 (2) a single individual [~~who by his~~] whose
4 actions [~~represents~~] represent that [~~he~~] the individual is a
5 political committee; and

6 (3) a person or an organization of two or more
7 persons that within one calendar year expends funds in excess
8 of five hundred dollars (\$500) to conduct an advertising
9 campaign for a political purpose;

10 M. "political purpose" means influencing or
11 attempting to influence an election [~~or pre-primary~~
12 ~~convention~~], including a constitutional amendment or other
13 question submitted to the voters;

14 N. "prescribed form" means a form or electronic
15 format prepared and prescribed by the secretary of state;

16 O. "proper filing officer" means either the
17 secretary of state or the county clerk as provided in Section
18 1-19-27 NMSA 1978;

19 P. "public official" means a person elected to an
20 office in an election covered by the Campaign Reporting Act or
21 a person appointed to an office that is subject to an election
22 covered by that act;

23 Q. "reporting individual" means every public
24 official, candidate or treasurer of a campaign committee and
25 every treasurer of a political committee; and

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